L18

File No. 459

Collection No.

1885.

A.

HC 18/1/47

Singore Residency

17/1/47

Pros. Serial Nos. 1 – 12

127

Subject.

Authorising the Civil & Sessions Judge, Coromandel of Bangalore to appoint an officer of his Court to administer oaths to declarants of affidavits.

Previous References.

Later References.

S. 97. (Blue).

DCFP - 8253&P—(G-1164)—28 3-29—14,500.

~~Proceedings,~~

File No. 459 of 1885

~~List of References.~~

Regr. No. 1885. 47

# RESIDENT'S OFFICE.

From The Civil and Sessions Judge, Civil and Military Station, Bangalore.

No. 1353

Dated 31 August 1885 | Enc. nil

Received 2 Septr: 1885 | Spare copies. nil.

Subject.

Empowering specially the Civil Court in the Civil and Military Station of Bangalore under Sec: 197 of the Code of Civil Procedure, Clause (C) to appoint an Officer of such Court to administer oath or affirmation to Process Servers. —

Notes and orders.

Serial No 2

In the above letter the Civil and Sessions Judge of the Civil and Military Station of Bangalore requests that he may be specially empowered under Section 197, Civil Procedure Code, Clause (C) to appoint an Officer of his Court to administer oath or affirmation to Process Servers who are required to prove the service of Summons, Notices &c, by affidavit. —

2. The Civil Judge states, that the processes issued from his Court, and the processes

(Continuation of Note or Précis.) 415

who will be appointed under Section 197, Clause (C) cannot, I submit, legally perform the duties devolving on the Court. It is further a portion of the Court's duty to declare the Service 'good' or 'insufficient'. This cannot be delegated to any person. It is a portion of the Judge's duty, and it is a Judicial function.

5. Under the Code of Civil Procedure several facts have to be proved by affidavits. For instance, if at any stage of any suit, other than a suit for immoveable property, if any Plaintiff wishes to apply to the Court to call upon the Defendant to furnish Security for his appearance to answer any decree that may be passed against him, he (the Plaintiff) will have to satisfy the Court by Affidavit or otherwise that the Defendant has absconded or left the Jurisdiction of the Court, or is about to abscond or leave the Jurisdiction,

or

46 (Continuation of Note or Précis.)

or has disposed of or removed from the Jurisdiction of the Court his property. Similarly affidavits are provided for in the Civil Procedure Code in the case of attachments before Judgments temporary injunctions and so on.

6. These affidavits are ordinarily attested by the Magistrates before they are filed in Courts. The Magistrates administer the oath of the declarant before attesting the affidavits. Sometimes the Judges of the Civil Courts themselves do so.

7. In a Court where the work is very heavy, and where several affidavits are filed and when the Judge cannot spare time, an Officer is appointed by the Court under Clause (c) to Section 197 to administer the oath of the declarant if the Local Government generally or specially empowers such Court in this behalf. The Resident as the Local Government of the Station has no doubt the power to empower the Civil Judge of the Station to appoint

an

an Officer of his Court to
administer the oath of the
declarant in the case of
such affidavits under the
Code of Civil Procedure,
but under the distinct provision
Contained in Section 82, it
is submitted that the duty
of the Court to Examine
Process Servers Cannot
be permitted to be delegated
to an Officer of the Court.
8. It will be seen from a
Copy of the Notification No.
215 dated the 20th day of
January 1882 that the
District Judge of the Nandy-
droog Division whose position
in the Mysore Province was
almost analogous to
that of the Civil Judge of
the Station was empowered
by the Dewan to appoint
an Officer of his Court
to administer the oath
of the declarant in the case
of affidavits under the
Civil Procedure Code.
It does not follow from
this, however, that the
District Judge was authorized
to delegate to a subordinate

(12) (Continuation of Note or Précis.)

the power of Examining Process Servers on oath under section 82.

9. It may be that a portion of the Civil Judge's time is now taken up daily in administering oaths to Summons Peons, and he is perhaps put to inconvenience in consequence, but as he has to undergo the inconvenience in virtue of his office, under the provisions of the Law, there is, it is submitted, no help for it.

10 It is respectfully suggested therefore that the Civil Judge may be informed that for the reasons given above, the Resident is unable to sanction his proposal.

17 Sept/05.

11. What is the practice in the Chief Court of Mysore, and in the Civil Sessions Courts of the Madras Presidency? Some do., keeping Copy, and answer this if form. Mad Not!

12. Read the Chief's do. reply of this date. It does not answer my questions clearly, & I am not sure that I am understand what he means.

(Continuation of Note or Précis.)

13. I understand that the existing practice is that when a witness has been summoned & does not appear (which happens in nearly every suit) the Court has to examine the driving officers under Sec. 62 of the Civil Pro: Code, upon oath, to prove due service. This probably takes abt. 5 minutes, & it is to this, which probably occurs 8 or 10 times a day, that Cl. 1 of the objects.

14. Sir Charles points to Sec. 1914, under which he said he can administer facts (including due service) by written proof in the form of an affidavit, and to Sec. 197 (c) under wh. with the permission he can authorize his Chief Clerk (or) to administer the requisite oath. All that we mean to ask for time to do will be to frame a form of affidavit which we have proposed beforehand without his having been troubled in any way) when in the Court of the hearing the default to appear is announced, & if it seemed satisfactory, he would accept it as proving due service. This will take practically no time.

15. Assuming that this

(Continuation of Note or Précis.)

interpretation of Col. Hill's meaning is correct; I am not able to say whether the precedents suggested by Mr Lyall or not. This case shows the necessity of the affidavit, nor can I learn what is the practice in other Courts. I should be inclined to think that Sec. 82 of the Code will allow of the suggested procedure. Mr McPherson will be able to inform the Court, if Mr L has any doubt on the point.

16. The simple administration of oath or affirmation occupies no time. It is the examination by the Court which takes up the Court's time. It will be useless to empower any Clerk merely to administer the oath.

Amen
1876

It appears to me that the decision of the Court should be left entirely to the discretion of the Court, and that it is not necessary to make any provision in the Code for the Court's decision regarding such matters, as to do so would be superseding the provisions of law contained in Sec. 82 of the Code. Moreover, I regret my inability to meet his wishes, inasmuch as reference to the practice of Courts in England in cases where the Court has power of examining

Sir's letter is wrong.

18. I think that Colonel Hill is wrong in his interpretation of the Law Court's Rules. See remarks on the 1st page of his d.o. dated the 18th inst.

19. Colonel Hill can be addressed accordingly in the terms proposed.

Done.
Nunn
19.9.85.

20. A draft is submitted for approval. 19.9.85.

Done.
Nunn
20.9.

21. Draft to the Civil Judge, Civil and Military Station of Bangalore issued, — No. 1739 dated the 24th September 1885. S.C. No. 5.

22. From the Civil Judge, C. & M. Station No. 2020 dated the 9 Decr 1885. S.C. No. 6

With this letter Colonel Hill forwards a communication from the Registrar of the Small Cause Court at Madras, from which he says it will be seen that the duty of swearing Bailiffs as to the service of summons is discharged by the Court or the Registrar who is one of the Executive Encls: to S.C. No. 6.

38 (Continuation of Note or Précis.)

Officers of the Court. As no Registrar has been appointed to ~~the Court~~ the Civil and Revenue Court of the Civil and Military Station, the duty would, Colonel Hill says, necessarily devolve on the Chief Clerk who is empowered under Sections 48, 230 and 251 to discharge certain important duties.

23. Colonel Hill at the same time submits, in support of his view, ~~a copy of~~ an Extract from the Rules framed by the High Court of Madras on the 8th November 1883, from which, he says, it is seen that the Nazirs and Deputy Nazirs of the Civil Courts have been empowered in the Madras Presidency to administer the oath to the Process Servers. Colonel Hill suggests that that duty in his Court may be entrusted to the Chief Clerk, who is the superior official of the Court and has more time at his command than the Nazir. Enclosure 6 of No. 6.

24. In the letter from the Registrar of the Small Cause Court at Madras, it is stated that for the purpose of proving the service of Summonses received from the Mofussil Courts, "the Bailiff is sworn "or solemnly affirmed, and he deposes "to the manner in which the service has Enclosure 6 of No. 6.

"been effected by him, and the Court
"does that his deposition corresponds
"with the endorsement of service on the
"original summons, and that the petition
"under Section 85 is then signed by the
"Judge or the Registrar before whom the
"deposition was made". The Registrar of
a Presidency Small Cause Court is not only
the Head Ministerial Officer of the Court
but is also a Judge for the disposal of
suits of value not exceeding Rs: 20. It is
probable therefore that the depositions of
Bailiffs are taken down by the Registrar in
his capacity of Judge and not in his ~~capacity~~
Executive capacity as stated by Col: Hill.
The words "the Court does" in the 1st line
of this page serve to place the matter beyond
doubt.

Enclosure 6 Sl No 6.

25. Turning next to the extract submitted
by Colonel Hill from the Rules dated the
8th November 1883 framed by the High Court
of Madras, it is observed that that High
Court makes a distinction between returns
of service of processes made in ordinary
cases, such as service under Section 79.
of the Civil Procedure Code, and returns of
Service under Sections 80, 168 and 343.
Service under Section 79 is when the serving
Officer delivers or tenders a copy of the
summons ~~for~~ to the defendant personally
or to an agent or another person on his
behalf. In such cases, that is, where the
summons has been satisfactorily served on

the Defendant himself in person or on his agent or other person, the Code simply provides (S. 81) that the serving officer shall endorse on the original summons the time when and the manner in which the summons was served. (No separate examination of the process server is necessary.) In the case of summonses so served the High Court of Madras has ruled that the return of service may be verified by affidavit, and under S. 197 (c) of the Civil Pro: Code it has empowered Nazirs and Deputy Nazirs to administer the oath to Process servers in connection with such affidavits.

26. Service under S. 80 is when the defendant cannot be found or when he refuses to sign an acknowledgment on the summons, and the serving officer affixes a copy of the summons on the outer door of the Defendant's house. In such cases, it is provided that the Court shall Examine the serving officer on oath, and shall declare whether the summons has been duly served or not. These are duties which it is incumbent upon the Court to perform and cannot be delegated to a Ministerial Officer. The Madras High Court holds the same view and has directed that when processes are returned under Sections 89; 168 & 343 are returned from one Court to another, the Court returning the process shall examine the serving officer or a Commission to be issued by the Court issuing the process.

The Court prescribed by Sec: 82, viz, that the Court shall examine the Serving Officer on oath in the case of Summonses returned under Section 80 is therefore followed under the Rules prescribed by the Madras High Court.

27. Colonel Hill started this correspondence on the ground that much of his time was taken up in administering oaths to Process Peons to prove the service of processes as required by Section 82 of the Civil Procedure Code. But it will be seen from the preceding paragraphs of this Note that it is exactly from the duties enjoined by Section 82 that Colonel Hill cannot be relieved. The statement of the Serving Officer which has to be taken down by the Court under Section 82 is not an affidavit and therefore the provisions of Sections 194 to 197 of the Civil Pro: Code cannot apply to it. It is, on the contrary, a deposition made orally by the Serving Officer in answer to questions put by the Court relative to the service of the process.

28. The result of the foregoing examination of the subject is ~~as~~ this. If considered necessary, a Notification may be issued by the Resident under Section 197(c) of the Civil Procedure Code, similar to that issued by the Mysore Government on the 20th January 1882, empowering the

Ex. No. 1.

Civil Judge of the C & M Station of Bangalore to appoint an Officer of his Court to administer the oath of the ~~applicant~~ declarant in the case of affidavits under the Code. Such an officer, however, cannot take upon himself the power of examining a Process Server on oath under Sections 80, 168 and 343. The Civil and Sessions Judge may, it is submitted, be informed of the foregoing view of the case.

HH
18/12/85

Resident. J. & C. 22.12.85

29. Before answering Colonel Hill it would be well, I think, that we should learn whether the Madras High Court & the Madras S.C. Court interpret the term Court according to Colonel Hill's view or ours. In my view see note on the face of p. 1 of Sl 4 of this file. G 28.12.85.

Shimoga.

30. Submit draft.
J. C. C.
2.1.86

31. Draft to the Registrar of the Madras High Court and to the Registrar of the Small Cause Court at Madras submitted for approval.

HH (32) Dasa. J. & C. 21.1.86
21.1.86.

33 Letters to the Registrar of the High Court of Judicature & of the Court of small causes Madras, issued accordingly
R O 165/459 of 22nd January 188[illegible]

33 Letters to the Registrar of the High Court of Judicature and of the Court of Small Causes. Madras, issued accordingly. No. 165/459 dated 22nd January 86.

Sl. No. 7.

34. From the Registrar, Appellate Side, High Court, Madras,
No. 479 dated 17th February 1886.

Sl. No. 8.

In this letter it is stated that the Honble the Judges of the High Court regret that they do not feel themselves at liberty to contravene the established practice of the High Court by giving an extra-judicial opinion on the point referred by the Resident in letter No. 165/459 dated the 22nd January 1886 from this Office.

Sl. No. 7.

35. No reply has yet been received from the Registrar of the Small Cause Court, Madras, to letter No. 165/459 dated the 22nd January 1886 from this Office. A reminder* is herewith submitted for approval.

Sl. No. 7.

* This draft reminder has since been destroyed.

4.3.86

[36] The reply was received by this morning's post - Resubmit file

1.3.86.

2.3.86.

37. From the Registrar, Madras Court of Small Causes.
No. 165 dated the 25th July 1886.

Sl. No. 9.

With this letter the Registrar of the Court of Small Causes at Madras forwards the minutes recorded by the Judges of

that Court on the question referred for opinion in Letter No. 165/459 dated the 22nd January 1886 from this Office. Ex. No. 7.

38. It is observed that out of the three Judges constituting that Court, two (viz, the Chief Judge Mr. Handley and Mr. Justice Ponnuswami Pillay) have expressed the opinion that the expression "Court" in Section 82 of the Code of Civil Procedure refers to the "presiding officer of the Court" and not to "ministerial officer". ~~of~~ The Chief Judge has stated further that as a special procedure is provided by Sec: 82 in the case of Summonses returned under Section 80, it is not competent to any Court to order under S. 194 that evidence may be taken in such cases by affidavit under Chapter XII (Sections 194 — 197) of the Code. It is respectfully pointed out that the same view has been expressed in paras 26, 27 and 28 above. Enclosures I and III to Ex. No. 9.

39. The Judge of the Small Cause Court (Mr. Srinivasachar), however, has expressed a different opinion on the case, saying that affidavits sworn to by process servers before any officer empowered by the Local Government in this behalf under S. 197 of the Code of Civil Enclosure II to Ex. No. 9.

Procedure, are quite admissible to prove the service of Summons as required by Sec: 82 of the Code. It is respectfully submitted, however, that the view expressed by the Chief Judge and Mr Justice Sonnerat Sankaran Nillay appears to be the correct one.

Enclosures I and III to D. No 9.

40. It has already been brought to notice in para 34 above that the Judges of the Madras High Court have declined to give an opinion on the point.

41. Under these circumstances it is respectfully suggested that Colonel Hill may be addressed in the sense of para 28 above, in reply to his letter No 2020 dated the 9th December 1885 addressed to this office.

D. No 6.

4.3.86

42. Resident I. Hill 6.3.86

43. 9.3.86.

Camp. Mysore.

44. Submit draft. I. Hill 9.3.86

45. Ret. at Bangalore 11.3.86.

46. A draft letter addressed to the

Civil and Sessions Judge of the Civil and Military Station of Bangalore a draft Notification ~~Empowering~~ (similar to Notification No. 215 dated the 20th January 1882 issued by the Mysore Government) Empowering the C & S. Judge ~~to act~~ under Section 197 (c) of the Civil Procedure Code are herewith submitted for approval. 86 No 1

KR
12.3.86 47. Issue. J. H.C. 13.3.86

48. Letter to the Civil and Sessions Judge, Bangalore, issued, No. 621/459 dated 16th March/86. 86 No 11
and the Notification No. 620/459 dated 16th March/86. 86 No 12.
to the Publisher, Gazette of India.

49. From the Civil and Sessions Judge, C & M Stn No. 510 dated the 12th March 1886. (Rec'd 17th) 86 No 13

~~In this~~ This is a reminder from Colonel Nick asking for an Early reply to his letter No 2020 dated the 9th December 1885 to this office. 86 No 6.

50. A reply was given to the C & S Judge in the letter No. 621/459 dated the 16th March 1886. The reminder now received may, it is submitted, be filed. 86 No 11.

Yes. J. H.C. 20.3.86

KR
19.3.86

Notification by the Dewan to His Highness the Maha Raja of Mysore.

General 28

The 20th January 1882.

No. 215 – The District Judge, Nundydrog Division, is empowered under Clause C, Section 197 of the Civil Procedure Code, to appoint an officer of his Court to administer the oath of the declarant in the case of affidavits under the said Code.

"

A True Copy
Addl Asstt Secy
8.9.05.

1099

2.

OFFICE OF THE
Mis: 927
2 SEP 86
RESIDENT IN MYSORE

No. 1353

Civil and Sessions Court
Civil and Military Station
Bangalore 31st August 1886.

27

From

The Civil and Sessions Judge
Civil and Military Station
Bangalore.

To

The Assistant
to the Resident
in Mysore
Bangalore.

Sir,

I have the honor to request that you will be so good as to move the Local Government to empower specially the Civil Court in the Civil and Military Station of Bangalore, under section 197 C. P. C. Clause (C) to appoint an Officer of such Court to administer oath or affirmation to Process servers who are required to prove the service of summons, Notice etc: by affidavit.

2 The processes issued from this Court and the processes received from the outstations being many a portion of my time is now taken up each day in administering oaths to the summons peons to prove the service of summons required by section 82 of the Civil Procedure Code.

I have the honor to be
Sir,
Your most obedient servant.

Civil and Sessions Judge.

Ref. to Clause (C) No. 1739 dated 7-9-86.

The Residents office. 26
Dated 17th September 1883

My dear Colonel.

I am not quite sure if I have correctly grasped the meaning of your No 1353. dated 31st August last. Section 197 of the Code only refers to Affidavits. Can the statements on oath to which you refer come within that Category? Would you mind stating briefly the procedure which now occupies valuable time, and which you wish to change, and the procedure which you would substitute for it.

Yours Sincerely.
(signed) A. H. T. Martindale.

A/17.9.85.

Mustadar / Mukhtar 9 Jan 1884

Declaration 18th Sept 85-

Martindale -

Vide section 82 of the C. P. Code

By the term "Court" by whom

the Serving Officer should be examined

as to his proceedings: but the term

evidently embraces Ministerial Officers

of the Court for under clause c of

section 197 of the Civil Pro: Code -

which I have quoted in my

letter I have the power when

empowered to appoint any

Officer of my Court to administer

oath to the declarant -

An affidavit is a written declaration on oath - Section 194 of the C.P. Code confers on the Court power to order any particular fact being proved by an affidavit and that the affidavit of any witness may be read at the hearing on such conditions as the Court thinks reasonable -

Therefore the certificate of having served the process which a Batta Peon has to make would if Plaintiff's affirmed be admissible as evidence as an affidavit.

Yours sincerely

Bill

No. 885.

245

Resident's Office.

( )

the 24th Sept 1885.

[DRAFT.]—For approval.

No. 1739/885

To The Civil and Sessions Judge
Civil and Military Station
Bangalore.

Sir,

I am directed to acknowledge the receipt of your letter No. 1353, dated 31st August 1885, requesting that ~~you might be~~ may be empowered under ~~clause (C), to~~ section 197 clause (C) of the Civil Procedure Code, to appoint an officer of ~~your~~ that Court to administer oath or affirmation to Process Servers who are required to prove the service of Summons, ~~notice~~ &c, by affidavit.

Serial No. 2.

The C. J. ~~Court~~ of the H.C.J.T.
The Provisions of ——

2. In reply I am to say that it appears to the officiating Resident that the bestowal of the power allowable under

SUBJECT.

Informs that the Civil and Sessions Judge cannot be empowered under clause (C) to section 197 of the Civil Procedure Code.

*Proceedings,* *No.*

23

clause (C) to section 197 of the Civil Procedure Code, would be, ~~to~~ for the purpose in respect of which you desire it, tantamount to ~~giving you~~ an authority to disregard the provision of law contained in section 82 of the said Code. Consequently Mr Girdlestone regrets his inability to meet with your wishes, unless by reference to the practice of Analogous Courts in British Territory ~~it~~ can be shown ~~him~~ that this view of his responsibility is wrong.

I have &c.

23.4.

Assistant to the Resident.

22.4.85.

OFFICE OF THE
G. 1010
19 DEC 85
RESIDENT IN MYSORE

1,59

226

No. 2020

Civil and Sessions Court
Civil and Military Station
Bangalore 9th December
1885.

Encl: 3

9.12.85
10.12.85
Rect. 14.12.85 4 p.m.

Note prepared
18/12/85.
Subt 19.12.85

From,

The Civil and Sessions Judge,
Civil and Military Station,
Bangalore.

To.

The Assistant
to the Resident
in Mysore
Bangalore.

Sir,

In conformity with the permission granted in the latter part of para 2 of your letter No. 1739/885 of the 24th September 1885, with respect to the empowering by me, of the Chief Clerk of my Court, to administer affidavits under section 197 of the Civil Procedure Code, I have the honor to submit copy of letter No. 677 from the Registrar of the Small Cause Court Madras and its enclosure (to be obligingly returned), from which it will be seen, that the duty of swearing bailiffs as to the service of summons is discharged by the Court, or the Registrar, who is one of the Executive Officers of the Court. As no Registrar has been appointed to this Court, the duty would necessarily devolve on the Chief Clerk, who is empowered under sections 48, 230 and 251 of the Civil Procedure Code, to discharge most of such duties.

2. At the same time I beg to submit, in support of the view taken by me, extract from

from the rules framed by the High Court of Judicature at Madras on the 8th November 1883, by which it will be seen that the Nazirs and Deputy Nazirs have been empowered in the Madras Presidency to administer the oath to the Process servers. The Chief Clerk may be selected in this Court for that duty as the superior Official, who has more time at his command than the Nazir.

I have the honor to be
Sir,
your most obedient servant.

J Bill

Civil and Sessions Judge.

9.

No. 677 Madras Court of Small Causes

19

From,

The Registrar,
Small Cause Court,
Madras.

To,

The Chief Clerk
Civil Judge's Court
Civil and Military Station
Bangalore

Sir,

With reference to your letter No. 1544, dated 29th September 1885, I have the honor to state that the service of Summonses received from the Moffusil Courts is proved in the same manner as the service of Summonses of this Court is proved, that is, the Bailiff is Sworn or Solemnly affirmed, as the case may be, and he deposes to the manner in which the service has been effected by him, and the Court sees that his deposition corresponds with the endorsement of service on the original Summons. The return under Section 86 is then signed by the Judge or Registrar before whom the deposition was made, and by the Officer who administers the Oath to the Bailiff. I enclose a printed form of the return under Section 85 used in this Court.

I have &c.,
(Signed) J. Mc. Mastell
Registrar

Copy
Madar Rahiman
Chief Clerk

## No. 121.

## TO ACCOMPANY RETURN OF SUMMONS OF ANOTHER COURT.

*Section 85 of the Code of Civil Procedure.*

## IN THE COURT OF SMALL CAUSES AT MADRAS.

CIVIL SUIT No. of 188

The day of 188

*Plaintiff,*

*against*

*Defendant.*

READ proceeding from the
forwarding for service on
in Civil Suit No. of 188 , of that Court.

Read bailiff's endorsement on the back of the process stating that the

and proof of the above having been duly taken by me on the oath *or* affirmation of
a bailiff of this Court, it is ordered that the
be returned to the
with a copy of this proceeding.

| MEMO. | *Rs.* | *a.* | *p.* | *Rs.* | *a.* | *p.* |
|---|---|---|---|---|---|---|
| Received in stamps, Rs. | | | | | | |
| Process Fee ... ... ... | | | | | | |
| Witness batta ... ... ... | | | | | | |
| Return Postage ... ... ... | | | | | | |
| Balance returned ... ... ... | | | | | | |

*Registrar.*

*Exd.*

*Clerk.*

Solemn affirmation
administered by me

*Judge's Clerk.*

Extract from the Rules framed by the High Court of Judicature at Madras on the 8th Nov 1883

Rules ~~XIV~~ × × ×

The return of service shall ordinarily be verified by affidavit, and under section 197 (b) of the Code of Civil Procedure, all Nazirs and Deputy Nazirs are hereby empowered to administer the oath to any process-server. Such affidavit may be read at the hearing and used as proof of service.

When a process is returned under sections 80, 168 or 343, the Court is required to examine the serving officer on oath; but under section 386 (c), in the case of the process-servers of an outlying Court, such examination may generally be taken under a commission. The Commission will be in the form of an authority (written or printed at the foot of, or attached to, every process) to the Munsiff to examine the process server if necessary.

"True Extract"

Dist. Munsiff's Court
Krishnagiri
30th November 1883.

"Copy"

Abdul Rahman
Chief Clerk

16 7

RESIDENT'S OFFICE.

( )

Mercara, the 22nd January 1886.
Despatched 23rd January 1886

[DRAFT.]—For approval.

No. 16.5 / 4.59

To

(1). The Registrar of the
High Court of Judicature
at Madras.

(2). The Registrar of the
Court of Small Causes,
Madras.

Sir,

A question is pending before the Fifth Assistant, Bangalore, under the provisions of Section 197 of the Code of Civil Procedure (Act XIV of 1882) the Local Government may empower the Civil and Sessions Judge of the Civil and Military Station of Bangalore to appoint an Officer of his Court to administer oath or affirmation to process servers to prove the service of summons as required by Section 82 of the Code.

2. It is provided in Sec. 82.

SUBJECT.

*Proceeding,* No.

that when a summons is returned under Section 80 the Court shall examine the serving officer, and it would seem that this direction precludes the appointment of a subordinate officer of the Court to administer the oath to process servers in this class of cases. This interpretation is borne out by the terms of Rule XIV of the Rules framed by the High Court of Madras on the 4th November 1873, by which although all Vakils and Deputy Vakils are, under the provisions of Section 197(6), empowered to administer the oath to any process server, still it is held that in the case of processes returned under Sections 80, 168 and 343 of the Code, the Court is required to examine the serving officer on oath. ~~It is also observed that in the definition of "public officer" given in S. 2 of the Code of Civil Procedure, a distinction is made between "Court of Justice" and "officers of such Court."~~

3. A contrary view has however been just favoured that the term "Court" used in Section 82 must be held to embrace ministerial officers of the Court, because under Section 197 of the Code of Civil Procedure, any officer

14

(Continuation of Note or Précis.)

appointed by any Court (other than a High Court) which the Local Government has generally or specially empowered in this behalf, may administer the oath of the declarant. This view, however, does not commend itself to Mr Gridlestone because, ~~the~~ in the definition of "public Officer" given in Section 2 of the Code of Civil Procedure, a distinction is made between a "Court of Justice" and an "Officer of the Court."

To enable Mr Gridlestone to issue definite instructions desired by him to ask the favour of being furnished

4. ~~Before final orders are passed~~ on the point, I am ~~directed to request that the Offg Resident may be favored~~ with the opinion of their Lordships the Judges of the High Court / their Honors the Judges of the Court of Small Causes on the foregoing question.

I have &c.

J.H.L.

Offg Secy to the President.

H.L.
19.1.86.

OFFICE OF THE
G. 690
27 FEB 86
RESIDENT IN MYSORE



No. 479

High Court of Judicature,
Madras, 17th February 1886.

From

H. J. Ross Esquire,
Acting Registrar of the High Court
of Judicature at Madras.

To

Major J. H. Nevill,
Assistant Resident,
Mysore.

A.P.
9.FL
27.2.86
Subt with Note
1.3.86 FL

Sir,

In reply to your letter No. 165/459, dated 22nd ultimo, I am to express the regret of the Honorable the Judges that they do not feel themselves at liberty to contravene the established practice of the High Court by giving an extra-judicial opinion on the point referred by the Resident.

I have the honor to be,
Sir,
Your most obedient servant,

H. Ross.
Ag: Registrar,
Appellate Side

Sd. V. Venugopalchaidu

12

No. 165

Madras Court of Small Causes
25th February 1886

From,

The Registrar,
Madras Court of Small Causes

OFFICE OF THE
G. 731
2 MAR 86
RESIDENT IN MYSORE

To,

The Assistant to the Resident
in Mysore

Mr. A.R.
P.P.
2/Mar
2-3-86
Rect. 3/3/86

Sir,

With reference to your letter No. 165/459 dated 22nd January 1886, I have the honor to forward herewith Copies of the minutes of the Judges on the question referred by you.

I have the honor to be,
Sir,
Your most Obedt Servt
D. M. Marshall
Registrar

Enclosure I
to Serial No 9

I think that Section 82 requires a personal examination on oath of the serving officer by the Court which issued the summons or the Court to which the summons is sent for service under Section 85, and does not permit of the service being proved by Affidavit.

The words "the Court" in Section 82 obviously refer to the same Court as is mentioned in Section 80 to which the original Summons is to be returned and that is "the Court from which it issued," which words are made applicable to the Court to which the summons is sent for service under Section 85 by the latter clause of that Section which provides that such Court shall proceed as if the summons had been issued by itself.

A special procedure having been prescribed by Section 82 to be followed in the case of a Summons returned under Section 80, it appears to me that it is not competent to any Court to order under Section 194 that evidence may be taken in such cases by Affidavit under Chapter XIII of the Code

In my opinion there are very great reasons why the special procedure prescribed by Section 82 shall be followed and I think it is not desirable that evidence by Affidavit before an inferior official shall be substituted for the personal examination as well of the serving officer.

W. J. M. Handley
Chief Judge
21/2/86.

I think that Affidavits sworn to by process-servers before any officer empowered by the Local Government in that behalf under Section 197 of the Code of Civil Procedure, are quite admissible to prove the service of summons as required by Section 82 of the code. It is clear that S. 197 draws no line of distinction between Affidavits sworn to before a Court, or before an officer, in respect of their validity; and there is nothing in S 82 which would render affidavits sworn to before a subordinate officer (if duly empowered in this behalf), illegal in any way. Indeed, it seems to me that S. 82 does not concern itself with this or that kind of affidavits, – its whole object being to provide a procedure to be followed when the summons is returned under S. 80, but not to prescribe any particular form of evidence to be adduced in this matter, any more than in other matters forming the subject of judicial inquiry. The words in Section 82 that "the Court shall examine the serving officer on oath," does not, I think, mean any thing more than the direction that the Court shall receive the evidence of the serving officer given in a legal way" – without professing to prejudicate the form of evidence. To hold otherwise would be to hold that the words that "the Court shall examine the serving officer" mean that the Court shall personally examine

8 the serving officer in every case, and shall not admit, not only Affidavits sworn to before a subordinate officer, but also those sworn to before a Court; and even the evidence taken under a Commission would be inadmissible! It is impossible to suppose that the Legislature intended that of all matters coming before a Judicial tribunal, the fact in question, namely, the fact of service effected under S. 80, should alone be proved exclusively by means of evidence taken by the Court before itself, rejecting every other piece of testimony, which is perfectly legal, and which is allowed to prove every other point connected with a case. Moreover, this interpretation of S. 82 would deprive the Court of the evidence of Process server, if he happens to reside in a place, beyond the jurisdiction of the Court, whence he cannot be compelled to come down before it in person. (S. 176).

This is not all. The interpretation that the word in S. 82, namely, that "the Court shall examine the process server," precludes the subordinate officer of the Court to administer oath to the process server who is making an Affidavit, will also have the effect of precluding even the Court itself to administer such oaths, in cases where the summonses are sent to another Court for service, — for the "Court" in S. 82 is the Court before whom the suit is pending, and no other. The direction in S 82 that the Court shall declare that the summons has been served, order a fresh summons to be issued, and so on, cannot refer to any other Court

them that which has issued the summons originally. Thus the Court, as well as its officers, being precluded from administering oaths to the process servers in respect of Summons sent for service to another Court, the result would be that we shall have no Affidavits whatever in the very cases in which they are most needed. Surely this could not have been contemplated by the framers of Sec. 82.

Now, as to Rule XIV in the Proceedings of the High Court under date the 8th November/83, all that I have to say is that it simply indicates the action which a Court is to take when the summons is returned under Section 80. It first of all directs that the Court shall examine the serving officer on oath, as it is bound to do in all cases in which the process server's personal attendance can be secured; and then, it lays down an exception, in cases in which the servers happen to be absent. This exception has no doubt reference only to the evidence taken under a commission, but it is an exception all the same, and the High Court would not have allowed this exception, if they thought that the direction in S. 82 viz that the Court shall examine the serving officer, was so rigid as to exclude all other modes of receiving evidence. In fact there is nothing in this Rule XIV of the High Court which would render an Affidavit illegal and inadmissible for the purposes of S. 82, if such Affidavit

is otherwise legal and valid, under Sections 194 – to 197 of the Code of Civil Procedure.

6 Under these circumstances, I am inclined to think that Section 82 forms no exception to the general provisions of the Code; that it should be read together with Sections 194 &c. relating to Affidavits, as well as with Sections 383 &c. relating to the examination of witnesses under a Commission; that Affidavits sworn by process-servers before a Subordinate Officer of a Court (if empowered in this behalf) are admissible to prove services under S. 80 & 82, as well as under other Sections of the Code; and that therefore the Local Government may empower any officer of a Court in this behalf under S 197 of the Code of Civil Procedure.

Madras
10th July/86

(Sd.) Sreenivasa Row
Judge S. C. Court.

Enclosure III
to Sl No 9 5

I am of opinion that the word Court used in Section 82 C.C.P. means the presiding officer and not any ministerial officer or any officer appointed under Clause C Section 197 of the Code. It is this difficulty I believe, that made the High Court to issue Rule 14 referred to in the letter under consideration.

Sdj T. V. Ponnosamy
6-2-86

Draft. For Approval. 10

Residents' Office
Bangalore 16th March 86.

No. 620/4595

Notification

The Civil and Sessions Judge of the Civil and Military Station of Bangalore is hereby empowered, under Section 197 clause (c) of the Code of Civil Procedure (Act XIV of 1882), to appoint an Officer of his Court to administer the oath of the declarant in the case of affidavits under the said Code.

By order,

J M
A/S.A. to the Resident

12/3/86

To The Publisher Gazette of India.

Draft. For Approval. 113

Resident's Office
at Bangalore 16th March/86

No. 621/459 Encl 1.

To

The Civil and Sessions Judge,
Cantonment Station of Bangalore.

Sir,

I am directed to acknowledge the receipt of your letter No. 2020 dated the 9th December 1885, requesting that the Local Government may be pleased, under Section 197 (c) of the Civil Procedure Code, to empower you to appoint an officer of your Court to administer oath or affirmation to process servers who are required to prove the service of summonses &c.

Sl. No. 6

In continuation of previous correspondence,

2. In reply, I am desired to inform you that the Offg Resident has carefully considered the matter and is of opinion that the power of administering oath or affirmation can be conferred upon a Ministerial officer of the Court only in case of affidavits under the Code of Civil Procedure. The declarations made by process servers in order to prove the service of summonses returned under Sec: 80 of the Code, are not, however, affidavits, and Sec: 82 requires

2 in such cases that "the Court" shall examine the serving officer on oath and may make such further inquiry in the matter as it thinks fit. In the case of such summonses, therefore, and in the similar case of processes returned under Sections 168 and 343 of the Civil Procedure Code, Mr Gladstone considers that the duty of administering the oath to and examining the process server should not be delegated to a ministerial officer of the Court.

3. A copy of a Notification issued this day from this Office, empowering you to appoint an officer of your Court to administer the oath to the declarant in the case of affidavits under the Code, is forwarded herewith for your information and guidance.

I have &c

J R L
A/Sec: to the President

12.3.86

459 of 85

12

OFFICE OF T... G. 834 15 MAR 86 RESIDENT IN MYSORE

No. 510

Civil and Sessions Court
Civil and Military Station
Bangalore 12th March
1886.

1

From.

The Civil and Sessions Judge
Civil and Military Station
Bangalore.

J. H. R
14.3.86

Rect. 17.3.86
Ack

To.

The Assistant
to the Resident
in Mysore
Bangalore.

Sir,

I have the honor to invite your attention to this Office letter No. 2020, dated 9th December 1885, requesting that the Chief Clerk of this Court may be empowered to administer affidavits under section 197 of the Civil Procedure Code and to request the favor of an early reply.

I have the honor to be,

Sir,

Your most obedient servant.

J. Mill

Civil and Sessions Judge.

Ten.